IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 73 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SMT.RAMABEN HARJIVANDAS JETHVA

Versus

KANTILAL N.SOLANKI

Appearance:

1. Criminal Revision Application No. 73 of 1995

MR MB GANDHI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-3

MR SJ DAVE, APP for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/03/2003

ORAL JUDGEMENT

The petitioner above named has preferred this criminal revision application under Section 397 read with

Section 401 of the Code of Criminal Procedure, 1973 (for short, "the Code") challenging an order dated 22/02/95 recorded by the learned Judicial Magistrate First Class at Palanpur in Criminal Case No. 967 of 1993 under which the learned Magistrate discharged the present contesting respondents from the offences punishable under Section 477(a) and 506(2) IPC.

2. The petitioner was serving as a Teacher in a school. She found that some changes were made in her Service Book, so as to reduce her salary. She, accordingly, filed a criminal complaint before the trial court which was referred for investigation to the concerned Police Station under Section 156(3) of the said Code. After investigation, the Investigating Officer submitted a report for granting 'C' summary. After hearing, the learned Magistrate rejected the said prayer by an order dated 29/05/93 and directed that process be issued against the contesting respondents.

3. After recording evidence, the trial court found that the present petitioner did not suffer anything, on account of the changes made in the Service Book. The trial court also found that the Service Book was not a valuable security. The trial court also found that changes have been effected in the Service Book on account of orders from superior authority and therefore, no offence was made out against the contesting respondents. Accordingly, the learned Magistrate passed the aforesaid order directing the discharge of the contesting respondents.

4. Feeling aggrieved by the said order of the trial court, the petitioner has preferred this revision application before this Court. It has been contented here that the petitioner has actually suffered monetary loss on account of the aforesaid changes which were effected in the Service Book. It is also contended that because of the change in entries, loss was caused financially, to the petitioner and there is no evidence to show that the entries were changed on account of some orders from superior authority. It is, therefore, contended that the order passed by the learned Magistrate is illegal and perverse and deserve to be set aside.

5. After hearing, Rule was issued and it was duly served upon the contesting respondents. However, the contesting respondents have not thought it proper to appear before the court. At the same time, Mr.S J Dave, learned APP has appeared on behalf of respondent no. 4 - State.

6. During the course of hearing, it has been submitted by Mr.M B Gandhi and Mr.S J Dave that actually loss has been caused to the petitioner and it has not been considered by the trial court. It is also contented by them that there was no material before the trial court to prove that the contesting respondents had altered the entries without any authority or order of a superior Officer. After all, whether or not a change in the entry in Service Book will cause any loss to any party would be a question of fact, which is required to be appreciated, by properly appreciating the material on record. In the present case, the trial court has observed that the petitioner has not suffered any loss because of the change made in the entries in the Service Book. In fact, it seems that there is some force in the argument of Mr.M B Gandhi, learned advocate for the petitioner, when it has been submitted here that on account of change in the entries in the Service Book, the pay has been reduced and the effect of the date on which the selection grade has been granted to the petitioner has also been changed. It has, further, adversely affected the amount of salary and allowances payable to the petitioner at the relevant point of time. This aspect of the matter does not appear to have been appropriately canvassed before the trial court or it has not been properly appreciated by the trial court. Then, other aspect which has been submitted on behalf of the petitioner is that the entries have been changed, without any order of superior authority. It is not found from record that there was some order passed by some senior Officer for effecting change in the entries in the Service Book. The trial court seems to have inferred that ordinarily, the changes are effected in the entries in the Service Book only on the basis of the orders of the superior authority. However, the learned Magistrate has not referred any such direction or order issued by a superior authority for making changes in the entries in the Service Book. Therefore, it can be said prima facie that the changes have been made without any authority of superior Officers. This would mean that the contesting respondents themselves have made entries in the Service Book, prima facie and once it is found that the respondents did it, without any instructions from the superior authorities, prima facie, then it is also on record that according to the case of the petitioner financial loss has been caused on account of the change in the entries. In that view of the mater, it could not be said that no offence has been made out against the present contesting respondents. Anyway, it cannot be said that no case was made out and therefore, the contesting respondents should be discharged.

7. It is, therefore, clear that the trial court has not considered the aforesaid aspect of the case while discharging the contesting respondents from the aforesaid offence. Therefore, the order impugned in this revision application suffers from the aforesaid illegality and therefore, it would be necessary for this Court to interfere with the said order by exercising revisional jurisdiction.

8. For the foregoing reasons, this revision application is allowed. The order impugned in this revision application recorded by the trial court on 22/02/95 is ordered to be set aside. The trial court shall proceed to frame charge against the contesting respondents and after following due procedure, decide the case in accordance with law. Rule is made absolute to the above extent.

(D. P. Buch, J.)

pravin/